

NORTH DELTA WATER AGENCY

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June 5, 1998

Lester A. Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Dear Mr. Snow;

This letter is in response to your letter dated April 16, 1998 requesting information from local agencies to identify potential sites where habitat restoration can be integrated with levee reconstruction. We have reviewed your letter with responsible and knowledgeable people with experience in the area of this agency and offer the following comments and suggestions.

While we are submitting these comments in cooperation with the CALFED environmental program we are disturbed by a statement in the Draft PEIR/EIS now being presented for public comment. On page 2-10 of the document the first full paragraph states clearly "The ERP is not designed as mitigation for projects that would bolster the integrity of Delta levees." This statement presents the local districts with the dilemma of assisting CALFED in habitat improvements or reserving projects for any habitat programs which may be needed in the future for mitigation purposes. Should this policy be implemented it will likely make it difficult to gain the full cooperation of local districts in the Delta. Indeed, local districts will be unlikely to support an ERP that does not provide mitigation for the core levee improvement projects.

There are five basic issues we feel should be addressed as overall matters that should be the underpinnings of any habitat development plan for the Delta.

1 The flooding of existing islands should be avoided. Delta island lands were not historically tidal lands but were swamp and overflow lands as examination of their patent and title demonstrate. Flooding of productive islands will not be restoration but creation of a new type of habitat.

2. Improvement of channel capacity to pass flood flows through the Delta should be given high priority. Such channel improvements have to be hydraulically compatible with upstream flood contributions and extend to the point where additional flood hazard is relieved.

3. Maintenance of the flood channel capacity and the integrity of the levee system are essential to the future of the Delta. Providing for the long term maintenance needs is a serious concern.

4. Regulatory relief for the future maintenance of the Delta is essential. Today there are conflicting and in some cases damaging requirements placed on local agencies as requirements for maintaining their facilities. Legislative changes in the regulatory process are needed. Provision for "safe harbor" protection to the local districts and landowners for present and future impacts due to habitat establishment must precede project development.

5. Recognition of the essential needs of the local agencies to perform flood fight efforts must be included in the CALFED process. Increasing conflict among local, state and federal agencies will not assist the flood protection program so essential to the Delta.

Responding to your request number 1) we must question the scientific basis for your interest in providing additional shallow water habitat and what quantity of fish and wildlife will be produced relative to the quantity of habitat established. We understand your interest and agree with the intent to use existing non farm lands to increase habitat.

Frank's Tract in the western Delta should be considered for shallow shaded habitat enhancement. This former island is relatively shallow and with construction of a levee grid would offer significant area for your purposes. It would further avoid adverse impacts such as loss of income to local agencies and reduction of economic activity in the area. No existing agricultural uses would be eliminated while habitat could be created.

Based on the experience of those who have attempted similar efforts we believe your objective of providing shallow water habitat in existing channels and sloughs may be unachievable. Disposal of material into water has been denied local agencies due to Federal Clean Water Act restraints prohibiting the filling of wetlands and for water quality concerns. No effort by a local district to substitute one type of habitat for another has been acceptable to regulatory agencies. How will you overcome this type of statutory limitation?

As an example, demonstration sites on Staten Island have shown the potential for success of your proposal. However the establishment of such sites could create a new base line of environmental habitat which would result in denial to the landowner of the ability to continue an adequate and safe level of flood protection. How will the CALFED program address such restraints?

One potential in response to item 2) which might be considered for maintenance dredging to maintain adequate connecting depth to larger channels would be Seven Mile Slough between Twitchell and Brannan Islands. Reducing the channel depth could be beneficial to levee security. The site is also less

likely to be impaired by regulatory restrictions due to its isolation from major channels.

Elk Slough, located near Clarksburg between RD 999 and RD 150 is approximately ten miles in length and is closed at the upper end and open at the lower end at Sutter Slough. The width is 60 to 80 feet at the north widening to about 200 feet at its lower end. This would appear to be either presently usable as "shallow habitat" or be made so. Alterations to Elk Slough like Seven Mile Slough would need to accommodate the irrigation and drainage activities that are currently carried on and not add to any conflicts of those uses with environmental goals by creation of enhanced habitat.

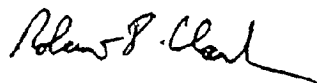
Hog, Beaver and Sycamore Sloughs might also be considered if in the process the need to preserve flood control, irrigation and drainage is maintained or enhanced. Closure of channels, reaches and sloughs to disruptive activities such as boating could provide a better aquatic environment for hatching and rearing of aquatic species.

As to item 3) we are unaware of any stagnant reaches that have lost their habitat due to invasive plants within NDWA. Does the presence of water hyacinth and other aquatic plants provide the best source of shaded water habitat? Utilization of stagnant reaches would be preferable to the flooding of existing islands.

Your request in item 4) we believe to be an excellent but challenging proposal to provide protection of berms along major channels. One site on Staten Island was recently protected during a flood fight with rock to prevent the washout and loss of several willow trees along a levee berm. The U. S. Army Corps of Engineers is considering ordering the rock removed since they interpret it to be fill in waters of the United States. This is an example of the problems we have referred to above with the regulatory issue. How do you intend to overcome this type of conflict? How will CALFED obtain the authority to oversee and correct such actions?

We appreciate the opportunity to offer these comments in an effort to respond to your letter and further the CALFED planning program.

Sincerely,



Robert D. Clark
Manager